IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOSEPH GEORGE NARA, #7667 Petitioner,	)
v.	) Civil Action No. 99-5
	) Judge McVerry
FREDERICK FRANK, *et al.* Respondent	) Magistrate Ciazza

MEMORANDUM ORDER

Joseph George Nara's Petition for Writ of Habeas Corpus was received by the Clerk of Court on January 4, 1999, and was referred to United States Magistrate Judge Francis X. Caiazza for a Report and Recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation, filed on September 1, 2005, recommended that the Petition for Writ of Habeas Corpus filed by Joseph George Nara be granted to the

extent that he be permitted to withdraw his guilty pleas. Furthermore, it was recommended that the Commonwealth of Pennsylvania be directed to commence trial within one-hundred and twenty days measuring from the date of the entry of the Memorandum Order. The parties were allowed ten (10) days from the date of service to file objections. Service was made on the Petitioner by First Class United States Mail and on the Respondents. No objections have been filed. After review of the pleadings and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 27th day of September, 2005; IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus filed by Joseph George Nara is GRANTED and that he be permitted to withdraw his guilty pleas. IT IS FURTHER ORDERED that the

execution of the Writ of Habeas Corpus is STAYED for one-hundred and twenty (120) days from the date of this Order, during which time the Commonwealth of Pennsylvania is directed to commence the trial of the Petitioner Joseph George Nara. After 120 days, should the Commonwealth of Pennsylvania not commence the trial of the Petitioner, the Commonwealth shall release the Joseph George Nara from custody.[1] If either party files an appeal of this Memorandum Order to the United States Court of

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[1] 1. *See* Carpenter v. Vaughn, 296 F.3d 138, 159-160 (3d Cir. 2002) (remanding for the grant of habeas corpus relief, unless, within a time to be set by the District Court, a new penalty phase trial is held or until the petitioner is resentenced to a term of life imprisonment); Frey v. Fulcomer, 132 F.3d 916, 925 (3d Cir. 1997) (remanding to district court with instructions to grant the writ of habeas corpus conditionally, with the proviso that the Commonwealth of Pennsylvania conduct a new sentencing hearing within 120 days), *cert. denied*, 524 U.S. 911 (1988).

Appeals for the Third Circuit, all provisions of this Order shall be STAYED pending such appeal.

Finally, the Report and Recommendation of Magistrate Judge Francis X. Caiazza, dated September 1, 2005, is adopted as the opinion of the District Court.

The Clerk of Court is directed to close this case.

BY THE COURT:

September 27, 2005

s/ Terrence F. McVerry
U.S. District Court Judge

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